

**WEST VALLEY CITY
BOARD OF ADJUSTMENT
MINUTES**

March 3, 2010

This meeting was called to order at 6:00 p.m. by Chairperson, Necia Christensen, at 3600 Constitution Boulevard, West Valley City, Utah.

WEST VALLEY CITY BOARD OF ADJUSTMENT MEMBERS

Sioeli Uluakiola, Scott Spendlove, Sandy Naegle, and Necia Christensen

Those Absent: Russell Moore and Mark Farnsworth

WEST VALLEY CITY PLANNING DIVISION STAFF

Steve Lehman, Hannah Thiel and Karon Jensen

WEST VALLEY CITY LEGAL DEPARTMENT

Claire Gillmor

AUDIENCE:

Approximately two (2) people were in the audience.

B-1-2010
Gale Fairbourn – Variance Request
3370 South 4300 West

REQUEST:

Gale Fairbourn has filed a request with the West Valley City Board of Adjustment seeking a variance from Section 7-6-305(1) of the West Valley City Land Use Development and Management Act. This section requires that the side yard setback on the garage side in the R-1-8 zone be 10 feet and that the front yard setback in the R-1-8 zone be 25 feet. Mr. Fairbourn is requesting a variance of 6 feet on the garage side and 9 feet in the front in order to keep an existing carport structure. The property does not have another garage or carport. *This application was continued from February 3, 2010 for lack of majority vote.*

BACKGROUND:

WEST VALLEY CITY GENERAL PLAN recommends low density residential land uses.

- ☐ The subject property is known as Parcel Number 15-30-451-018. The property is lot 15 in Monroe Gardens Subdivision Phase 2. The home was built under Salt Lake County's jurisdiction in 1954 without any garage or carport.
- ☐ The applicant received a notice of violation from the City regarding the location of the proposed carport on the property. Upon contacting the City regarding setback and building regulations, staff informed the applicant that attached carports must meet the minimum setbacks for the house, in this case, 10' on the side, 25' in the front and, 20' in the back. They did not wish to move the carport to the rear of the home and meet accessory building setbacks as an access way to the rear is not present. After discussing these concerns and outlining the variance procedure, the applicant determined that they would request a variance.
- ☐ The applicant would like the Board of Adjustments to consider that if a *garage* were requested, there is an exception within the ordinance to allow garages on homes built prior to 1990 be setback 4' from the side property line. However, this exception does not apply to carports and carports are required to meet the full 10' setback.
- ☐ The property in question is 0.27 acres. The parcel has a frontage of 60 feet along 4300 West and a depth of 193 feet. Neighboring properties have similar frontages. The lot width is less than the current minimum lot width in the 'R-1-8' zone (80'), however, the subdivision was platted in 1963 before the City was incorporated with such frontages.
- ☐ All zoning regulations shall be met and a building permit will be obtained if this variance is approved. The applicant has submitted the criteria to the Board addressing the variance criteria in preparation of the hearing and is enclosed.

ORDINANCE SUMMARY:

Section 7-6-305(1) of the West Valley City Land Use Development and Management Act requires the rear yard setback to be 20 feet.

The West Valley City Land Use Development and Management Act Section 7-18-107 outline the standards or conditions for approving a variance. The Board of Adjustment may grant a variance only if:

1. Literal enforcement of the zoning ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the zoning ordinance.
2. There are special circumstances attached to the property that do not generally apply to other properties in the same zoning district.
3. Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zoning district.
4. The variance will not substantially affect the general plan and will not be contrary to the public interest.
5. The spirit of the zoning ordinance is observed and substantial justice done.

According to Williams, American Land Planning Law (Volume 5, "Criteria for the Validity of Variances", pages 131 and 133 et.seq.) There is a presumption against granting a variance and it can only be granted if each of the standards is met.

In Wells v. Board of Adjustment of Salt Lake City, the Utah Court of Appeals held that a Board's decision to grant a variance would be illegal if the required statutory findings were not made.

Hannah Thiel presented the application.

Applicant:
Gale Fairbourn
3370 South 4300 West

Mr. Fairbourn indicated that he had brought several letters from neighbors stating that they are in favor of the variance and he read that into the public record. The approval letters from residents in the neighborhood included Harry and Anna who live across the street and Beverly Faircoff who lives adjacent to their home. Nancy & Liam Huebner live to the south of my mother's home and have noted that her yard is very well maintained. Ralph Kloward is another neighbor who is favoring the variance request. My mother is currently 82 years old and granting the variance will make it easier to access the carport and to aid in winter snow removal.

Hannah Thiel, West Valley City Planner stated that she also received a phone call from Mark Bell who stated that he did not have any problem with the variance request and indicated that he resides to the north of the applicant.

Mrs. Fairbourn mentioned that if the variance request is denied and she is required to remove the carport it would ruin the cement and her driveway.

Discussion:

Mr. Uluakiola questioned why is it not feasible to move the carport to the back?

Mrs. Christensen responded that this issues was in the Board's discussion last month. Given the lot size, the applicant does have the option of building a single car garage and the structure would meet with City ordinances. However, the garage would have to be in the back yard to be considered detached.

Mr. Spendlove asked about the rear setback. Hannah said if it moved it would have to be moved 6 feet from the back of the home.

Mrs. Christensen noted that it would still be required to maintain the minimum setback.

Mrs. Thiel responded that it is considered a 25' 10 garage & 20 in back. If the variance request is not approved, the applicant would need to move it behind the home and it would fall under a different category.

Mrs. Fairbourn stated that if it is moved next to my home I would not have access to my backyard & I have a large backyard.

Mr. Fairbourn remarked that she is just asking for a variance for a few feet.

Criteria Discussion:

1. Literal enforcement of the zoning ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the zoning ordinance.

- The variance is located on my mother's property.
- The carport was added a number of years ago to provide a place for her to park her vehicle. The unreasonable hardship is not having a garage because of the lot width. The carport cover could be moved, but there are no improvements towards the back of the home making this not feasible.

Mrs. Fairbourn indicated that the hardship is the width of the lot. The lot size does not allow me to have a garage as there is not enough room to construct a garage.

Mr. Moore noted this home was built in 1954. He inquired has the City made an allowance for a smaller setback to the side of homes for garages with smaller lots?

Mrs. Thiel responded the ordinance has changed. Given the lot size, the applicant does have the option of building a single car garage and the structure would meet with City ordinances. However, the garage would have to be in the back yard to be considered detached.

Mr. Fairbourne responded that if the garage was located in my mother's back yard, it would be too hard for her as she would not be able to shovel the snow.

Mrs. Christensen responded and you are stating the unreasonable hardship is that your mother would have to shovel snow and the property is not wide enough to allow a garage.

2. There are special circumstances attached to the property that do not generally apply to other properties in the same zoning district.
 - The home was built under Salt Lake County jurisdiction in 1965. The frontage of the lot is only 60 feet. Although it is consistent with other properties in the subdivision a garage could not have been added to our home due to the limited width of the property. There are other properties on this street that are wider than my mom's making this property different.

Mrs. Christensen reiterated there are other properties in the area that are wider than this lot.

3. Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zoning district.
 - The covered carport will allow my mom to continue enjoying the benefits of having a cover for her car. At an older age, this is important. The concrete was not poured to the back of the house making this the only reasonable location.

Mrs. Christensen said the covered carport assures that your mother can enjoy the benefit of having a car and this is the only reasonable location for the carport at this time.

4. The variance will not substantially affect the general plan and will not be contrary to the public interest.
 - The structure in question was placed there many years ago. We have never had any complaints, nor has the City. The property is well maintained and because of its limited size, the carport does not detract from the subdivision.

Mrs. Christensen summarized the property is well maintained and there are no neighbors in opposition to the variance request.

5. The spirit of the zoning ordinance is observed and substantial justice done.

The spirit of the zoning ordinance is observed because this addition has been in place for many years and will provide a cover to a parked car for an older resident.

Mrs. Christensen acknowledged that the carport structure has been there for 10 years and provides cover for parking.

There being no further discussion regarding this application, Chairperson Christensen called for a motion.

Motion

Ms. Naegle stated I move that we approve B-1-2010 based on the criteria that was addressed by the applicant and consideration of neighborhood comments and information that was presented in the analysis.

Mr. Uluakiola seconded the motion.

A roll call was taken.

Mr. Uluakiola	yes
Mr. Moore	AB
Mr. Spendlove	no
Ms. Naegle	yes
Mr. Farnsworth	AB
Mrs. Christensen	yes

Motion carries – majority vote

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OTHER

The Board of Adjustment Study Session minutes for **February 3, 2010**, were **approved**.
The Board of Adjustment Public Hearing minutes for **February 3, 2010** were **approved**.

There being no further business the meeting adjourned at 6:40 p.m.

Karon Jensen, Administrative Assistant